



**NOT FOR PUBLICATION**

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In re:

ALFRED HUTCHINGS, JR.,  
  
Debtor.

Case No.: 2:17-bk-10233-RK

Chapter 7

**ORDER DENYING DEBTOR'S MOTION TO  
CONVERT UNDER 11 U.S.C § 706(a)  
WITHOUT PREJUDICE**

Date: April 11, 2017  
Time: 2:30 p.m.  
Courtroom: 1675

Pending before this court is the motion of Debtor Alfred Hutchings, Jr., under 11 U.S.C. § 706(a), to convert this Chapter 7 bankruptcy case to one under Chapter 13, Electronic Case Filing No. ("ECF") 24, filed on March 6, 2017. Matthew D. Resnik, of the law firm of Simon Resnik Hayes LLP, represents Debtor. The motion was filed on the court's Form 1017-1.1.MOTION.DEBTOR.CONVERT, and there was no evidence attached in support of the motion, apparently indicating that Debtor did not expect that any party in interest would oppose the motion to exercise his unwaivable right as the debtor in this bankruptcy case to convert the case under 11 U.S.C. § 706(a), which provides: "The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section

1 1112, 1208, or 1307 of this title. Any waiver of the right to convert a case under this  
2 subsection is unenforceable.” See also, *Marrama v. Citizens Bank of Massachusetts*,  
3 549 U.S. 365 (2007). No notice of motion was filed with the motion, which either  
4 noticed the motion for hearing or gave notice of an opportunity to request a hearing on  
5 the motion, as required by Local Bankruptcy Rule 9013-1(c)(2) and (o). The proof of  
6 service for the motion indicated service on the United States Trustee, the Chapter 7  
7 Trustee and many creditors, though the court determines that not all creditors were  
8 served with the motion since not all of the creditors on the case mailing matrix were  
9 served (i.e., Amex, Barclays Bank Delaware, County of Los Angeles Registrar, Discover  
10 Financial Services, LLC, and PRA Receivables Management, LLC, were not served,  
11 and no explanation was given in the proof of service for the motion why these entities  
12 on the mailing matrix were not served).

13 Although the motion was not accompanied by a notice of motion as required by  
14 Local Bankruptcy Rule 9013-1(c)(2) and (o), the motion drew written oppositions filed by  
15 Peter C. Anderson, the United States Trustee, and Richard K. Diamond, the Chapter 7  
16 Trustee, which oppositions requested . ECF 25, filed on March 8, 2017, and ECF 26,  
17 on March 9, 2017. Kenneth G. Lau, of the Office of the United States Trustee,  
18 represents the United States Trustee, and Sonia Singh, of the law firm of Danning, Gill,  
19 Diamond & Kollitz, LLP, represents the Chapter 7 Trustee.

20 Subsequently, on March 20, 2017, Debtor filed a notice of motion for the motion  
21 noticing it for hearing on April 11, 2017. Notice of Motion, ECF 27, filed on March 20,  
22 2017. The proof of service of the notice of motion indicated that the same parties which  
23 had been served with the motion originally were served with the notice of motion, which  
24 did not include all creditors.

25 On April 4, 2017, Debtor filed amended bankruptcy schedules, including  
26 amended income and expense schedules (Schedules I and J) and a reply to the  
27 oppositions of the United States Trustee and Chapter 7 Trustee. Debtor’s reply  
28 included a memorandum of points and authorities and substantive evidence in support

1 of the motion to convert. Although Debtor's reply was the first time that he set forth the  
2 legal and factual bases for his motion to convert, including his newly amended  
3 bankruptcy schedules, the proof of service for the reply indicates that Debtor served  
4 only the United States Trustee and the Chapter 7 Trustee and Raffi Khachadourian, of  
5 the law firm of Hemar, Rousso & Heald, LLP, who filed a request for special notice and  
6 may represent a creditor, though this is not indicated on the request for special notice,  
7 but no creditors were otherwise served with the reply.

8 Because the court finds that the motion is procedurally defective due to  
9 insufficient notice and service of process, pursuant to LBR 9013-1(j)(3), the court  
10 dispenses with oral arguments as unnecessary, vacates the hearing the motion on April  
11 11, 2017, takes the motion under submission, rules on the motion on procedural  
12 grounds on the papers without reaching the merits and denies the motion without  
13 prejudice.

14 Notice of motion and service of process are insufficient because Debtor did not  
15 serve all creditors with the notice of motion as required by Federal Rule of Bankruptcy  
16 Procedure 2002(a)(4). Since Local Bankruptcy Rule 9013-1(c)(3)(A) and (i) requires  
17 that factual contentions involved in a motion must be supported by declarations and  
18 other written evidence and that such evidence be attached to the motion, none of the  
19 evidence in support of the motion was filed until April 4, 2017 when Debtor amended his  
20 bankruptcy schedules and filed his reply, none of which was not served on any  
21 creditors, and thus, the court determines that notice to creditors is insufficient because  
22 they have not been given notice of the evidence in support of the motion pursuant to  
23 Local Bankruptcy Rule 9013-1(c)(3)(A) and (i).

24 Accordingly, the court denies the motion without prejudice for insufficient notice  
25 and lack of proper submission of supplemental evidence in support of the motion and  
26 directs that service of notice of any renewed motion be made upon all creditors listed on  
27 the creditor mailing matrix, the Chapter 7 Trustee, the United States Trustee and any  
28 party requesting special notice. The hearing on the motion set for April 11, 2017 at 2:30

1 p.m. is hereby vacated and taken off calendar, and no appearances are required on  
2 April 11, 2017.

3 IT IS SO ORDERED.

4 ###

25 Date: April 6, 2017



Robert Kwan  
United States Bankruptcy Judge